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C-475-823
Sunset Review
Public Document

October 15, 2004

MEMORANDUM TO: Jeffrey A. May
Acting Assistant Secretary
for Import Administration

FROM: Ronald K. Lorentzen
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Full Sunset Review of the
Countervailing Duty Order on Stainless Steel Plate in Coils from Italy:
Preliminary Results

Summary:

We analyzed the substantive responses and rebuttals to those responses of the interested parties in the full sunset review of the countervailing duty order on Stainless Steel Plate in Coils (“SSPC”) from Italy. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum for these preliminary results of review. Below is the complete list of the issues in this full sunset review for which we received substantive responses by parties:

1. Likelihood of continuation or recurrence of countervailable subsidies
2. Net countervailable subsidy likely to prevail

History of the Order:

On May 11, 1999, the Department published the countervailing duty order on SSPC from Italy. See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy, and South Africa, 64 FR 25288 (May 11, 1999). In the final affirmative countervailing duty determination, the following eleven programs were found to confer countervailable subsidies:

Government of Italy

- | | | |
|----|------------------------------------------------------------|---------------------|
| 1) | <i>Equity Infusions to Terni, TAS, and ILVA</i> | <i>1.03 percent</i> |
| 2) | <i>Benefits from the 1988-90 Restructuring of Finsider</i> | <i>2.81 percent</i> |
| 3) | <i>Debt Forgiveness: ILVA-to-AST</i> | <i>9.58 percent</i> |

4)	<i>Law 796/76 Exchange Rate Guarantees</i>	<i>0.82 percent</i>
5)	<i>Law 675/77</i>	<i>0.07 percent</i>
6)	<i>Law 10/91</i>	<i>0.00 percent</i>
7)	<i>Law 451/94 Pre-Privatization Employment Benefits</i>	<i>0.69 percent</i>
8)	<i>Law 181/89 Worker Adjustment and Redevelopment Assistance</i>	<i>0.00 percent</i>
9)	<i>Law 488/92</i>	<i>0.00 percent</i>

European Union:

1)	<i>ECSC Article 54 Loans</i>	<i>0.12 percent</i>
2)	<i>European Social Fund</i>	<i>0.03 percent</i>

See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, 64 FR 15508 (March 31, 1999), (“Investigation”). The Department determined a countervailing duty rate of 15.16 percent for ThyssenKrupp Acciai Speciali Terni, S.p.A. (“TKAST”) (formerly Acciai Speciali Terni, S.p.A.). The Department determined the all others rate also at 15.16 percent *ad valorem*.

The Department completed no administrative reviews of the subject countervailing duty order. One review was requested but later rescinded.

On May 11, 1999 the Department amended the final determination to agree with the International Trade Commission’s (“ITC”) determination. The ITC determined that a domestic industry was not materially injured or threatened with material injury by reason of imports of certain cold-rolled SSPC from Italy because these imports were “negligible.” See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy, and South Africa, 64 FR 25288, 25289 (May 11, 1999). However, the net subsidy rates did not change for SSPC from Italy. *Id.*

Respondents appealed the affirmative material injury findings of the ITC with respect to hot-rolled SSPC. The Court of International Trade (“CIT”) affirmed those findings in Acciai Speciali Terni v. United States, 118 F. Supp. 2d 1298 (CIT 2000). On a separate appeal, petitioners argued against the ITC’s negative material injury determination with respect to cold-rolled SSPC. Again, the CIT upheld the ITC’s findings. See Allegheny Ludlum Corp. v. United States, 116 F. Supp. 2d 1276 (CIT 2000). However, on a subsequent appeal to the Court of Appeals for the Federal Circuit, the Federal Circuit court vacated the Court’s decision and remanded for proceedings not in consistent with its decision. *Id.*, 287 f.3d 1365 (Fed.Cir. 2002).

On remand, the ITC reversed its original negative injury findings with respect to cold-rolled SSPC to determine that an industry in the United States is materially injured by imports of SSPC from Italy and to include both hot-rolled and cold-rolled SSPC within the scope of these orders. See Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Notice of Final Court Decision Affirming Remand Determinations, 68 FR 8925 (February 26, 2003). Therefore, in accordance with the court decisions and the ITC’s determination, the Department amended the countervailing duty orders for Italy to include cold-rolled SSPC; however, the net subsidy rates remained the same from the original investigation. See Notice of Amended Countervailable Duty

Orders; Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa, 68 FR 11524 (March 11, 2003). In this notice the Department listed AST under its new name, TKAST.

The Department realized it had failed to convert certain old numbers under the Harmonized Tariff System of the United States (“HTSUS”) and issued a correction. See Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa; Notice of Correction to the Amended Countervailing Duty Orders, 68 FR 20115 (April 24, 2003).

In the Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy, October 24, 2003, (“Section 129 Memo”), the Department determined that the privatization of AST (currently TKAST) was at arm’s-length and for fair-market-value, and that allegations of broader market distortions were not sufficiently supported. Accordingly, any allocable, non-recurring subsidies granted to AST prior to its privatization were extinguished in their entirety and, therefore, are non-countervailable. On November 7, 2003, the U.S. Trade Representative requested the Department, pursuant to section 129(b)(4) of the Uruguay Round Agreements Act, to implement the determination in the Section 129 Memo. See Notice of Implementation under Section 129 of the Uruguay Round Agreements Act, 68 FR 64858, (November 17, 2003). Accordingly, the Department revised the cash deposit rates for TKAST and “all other” Italian exporters at 1.62 percent to reflect the impact that privatization had on non-recurring, allocable subsidies for the countervailing duty order on SSPC from Italy as listed in following programs. *Id.*

<i>European Social Fund</i>	0.04 percent
<i>Law 451/94 Pre-Privatization Employment Benefits</i>	0.69 percent
<i>Law 675/77</i>	0.07 percent
<i>Law 796/76 Exchange Rate Guarantees</i>	0.82 percent

This preliminary sunset determination reflects the Department’s implementation with regards to the exclusion of programs relating to pre-privatization subsidies from this order pursuant to the Department’s Section 129 determination. We note that petitioners have appealed to the CIT challenging our decision to lower the net subsidy rate. See Allegheny Ludlum v. United States, Court No. 03-00920. This appeal is stayed pending the resolution of an appeal involving stainless steel sheet and strip in coils from Italy which addresses similar privatization issues . See Allegheny Ludlum v. United States, Court No. 03-00919. There have been no changed circumstances reviews of this order. Thus, the order remains in effect for all known producers and exporters of SSPC from Italy.

The programs that will be considered in this sunset review are:

- 1) *Law 796/76 Exchange Rate Guarantees*
- 2) *Law 675/77*
- 3) *Law 451/94 Early Retirement Benefits*
- 4) *European Social Fund*

Background:

On April 1, 2004, the Department initiated a sunset review of the countervailing duty (“CVD”) order on SSPC from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (Sunset) Reviews, 69 FR 17129 (April 1, 2004). The Department received a notice of intent to participate from Allegheny Ludlum Corp. (“Allegheny Ludlum”), North America Stainless (“NAS”), and the United Steelworkers of America, AFL-CIO/CLC (“USWA”), the domestic interested parties (collectively “domestic interested parties”), within the applicable deadline (April 16, 2004) specified in section 351.218(d)(1)(i) of the Sunset Regulations. See Response of the Domestic Interested Parties at 2, May 3, 2004 (“Domestic Response”). All domestic interested parties claimed interested-party status under section 771(9)(C) and (D) of the Act, as a U.S. producer of the domestic like product or a certified union whose workers are engaged in the production of the subject merchandise in the United States. See Domestic Response. The USWA was a petitioner in the investigation and has been involved in this proceeding since its inception. Id. at 6. Armo, Inc., J&L Specialty Steels, Inc., Lukens Inc., were also petitioners in the original investigation but are either no longer producers of subject merchandise or are scheduled to cease production of SSPC shortly. Id. According to the domestic parties of this review, two unions, Butler Armco Independent Union and Zanesville Armco Independent Organization, that were original petitioners are not participating in this sunset review because very few workers at these unions are engaged in the production of SSPC in the United States. Id. at 7. The domestic interested parties have participated as a group at various segments of this order. Id.

The Department received a complete substantive response to the notice of initiation on behalf of three respondent interested parties: the Government of Italy (“GOI”), the Delegation of the European Commission (“EC”), and TKAST. On May 3, 2004, we received substantive responses from all three respondent interested parties expressing their willingness to participate in this review as the authority responsible for defending the interest of the Member States of the European Union. See Responses of the GOI (unpaginated), May 3, 2004, (“GOI Response”); EC (unpaginated), April 30, 2004, (“EC Response”); and TKAST, May 3, 2004 (“TKAST Response”) at 2. All respondent interested parties note that they have in the past participated in this proceeding. On May 3, 2004, we received a substantive response from TKAST, a foreign producer and exporter of the subject merchandise as well as the respondent interested party under section 771(9)(A) of the Act, expressing its willingness to participate in this review as well as the Section 129 review. See TKAST Response at 2.

On May 3, 2004, we received a complete substantive response from the domestic interested parties within the 30-day deadline specified in the Department’s Regulations under section 351.218(d)(3)(i). See Domestic Response.

We received rebuttal comments from the domestic interested parties on May 10, 2004 (“Rebuttal”). No rebuttal comments were received from the respondent interested parties. Accordingly, on May 21, 2004, the Department of Commerce issued its determination that respondent parties did not provide an adequate response in the sunset review of the countervailing duty order on SSPC from Italy.

On June 10, 2004, pursuant to section 351.309(e)(ii) of the Department’s regulations, TKAST filed comments on the Department’s adequacy determination stating that the Department’s determination of respondents’ inadequacy was incorrect and should be reconsidered. See Letter of

TKAST, Stainless Steel Plate from Italy (Sunset): Adequacy of Responses (June 10, 2004). TKAST stated that no party had contested its statement on the record that it was the sole Italian producer as well as the sole significant Italian exporter of stainless steel plate in coils to the United States. *Id.* TKAST also stated that the Harmonized Tariff Schedules (HTS) codes identified in the scope of the order that were used to determine the export data submitted by the Government of Italy and the statistical data gathered on U.S. imports were too broad and included non-subject merchandise (e.g., black plate and stainless steel cut-to-length plate). *Id.* As a result, TKAST maintained that the Department should look to data reported by the U.S. Bureau of Customs and Border Protection (Customs) as part of its administration of the Continued Dumping and Subsidy Offset Act (CDSOA) for confirmation that TKAST's reported exports account for more than 50 percent of exports of the subject merchandise from Italy to the United States. *Id.* According to TKAST, these data help corroborate its assertion that TKAST accounts for more than 50 percent of the exports of subject merchandise to the United States in that the value of imports of subject merchandise derived from the reported data based on the total amount of duties collected on imports of subject merchandise from October 2000 through September 2002 is not only similar to the data reported by TKAST for the 2000-2003 period but also significantly below the GOI export data and U.S. import data relied upon by the Department in its adequacy determination. *Id.*

Also, on June 10, 2004, Allegheny Ludlum Corporation, North American Stainless and the United Steelworkers of America, petitioners in this case, filed comments arguing that the Department's adequacy determination was correct and that the expedited review is warranted. *See* Letter of Domestic Interested Parties, Stainless Steel Plate in Coils from Belgium, Canada, Italy, South Africa, South Korea and Taiwan: Five Year ("Sunset") Reviews of Antidumping Duty and Countervailing Duty Orders (June 10, 2004).

Upon consideration of the comments submitted by the interested parties, further examination of the HTS codes, and an examination of the CDSOA data, the Department reversed the May 21, 2004 adequacy determination, and pursuant to 19 C.F.R. § 351.218 (e)(2)(i), the Department determined to conduct a full sunset review of this order. *See Memorandum for James J. Jochum, Re: Adequacy Determination in Sunset Review of Stainless Steel Plate in Coils from Italy (C-475-823)*, July 13, 2004.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a

subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“Subsidies Agreement”).

Below we address the substantive responses and rebuttal comments of the interested parties. Due to numerous programs determined to be countervailable during the investigation, we address the interested parties’ comments in the following order.

Continuation or Recurrence of a Countervailable Subsidy

Comment 1: Termination of Countervailable Programs

Comment 2: Law 796/76 Exchange Rate Guarantees

Comment 3: Law 675/77

Comment 4: Law 451/94 Early Retirement Benefits

Comment 5: European Social Fund

Net Countervailable Subsidy Likely to Prevail

Comment 6: The Use of the Net Subsidy Rate from the Section 129 Process

Comment 7: Reduction of Rate for Law 451/94 Early Retirement Benefits:

New Subsidy Allegation

Comment 8: Newly Alleged Subsidies - Power Rate to Electrical Steel Operations Plant

1. Continuation or Recurrence of a Countervailable Subsidy: Interested Parties’ Comments

Comment 1: Termination of Countervailable Programs

In their May 3, 2004 substantive response, the domestic interested parties argue that the revocation of the countervailing duty order on SSPC from Italy would lead to unfair subsidization by the GOI, as well as material injury to the U.S. industry. See Domestic Response at 27. We note that the domestic interested parties did not comment on a specific program in their substantive response; however, they argued that there is evidence of a likelihood of continuation or recurrence of subsidies if this order were revoked based on the respondents’ dramatic reduction in sales to the United States. Id. In addition, domestic interested parties, citing to the Department’s Sunset Policy Bulletin and the Statement of Administrative Action (“SAA”) in the Uruguay Round Agreements Act, argue that the subsidies found in the investigation continue to confer benefits on Italian producers/exporters of subject merchandise. Id. at 29-30.

In its substantive response, the EC contends that it does not foresee any negative impact from revocation of the order or termination of the suspended investigation under review because previous investigations regarding other steel products from Italy have demonstrated that the Italian sector and TKAŠT, in particular, no longer benefit from any subsidy and there is no likelihood whatsoever that the situation may change in the foreseeable future. See EC Response.

The EC states that revocation of the order is not likely to lead to recurrence of subsidization because the EU steel sector has undergone a major restructuring in recent years under the careful monitoring of

the EC, and steel producers in the EU are now fully privately operated and compete on commercial terms in international markets. See GOI Response and the EC Response.

In addition, both respondents state that revocation of the order will not impact the EC policy on aid to the steel sector, which is one of the strictest among WTO Members following the adoption of a series of Commission Decisions (“the Community Steel Aid Code”). Id. Further, the GOI submits that Commission Decision 2496/96 of December 18, 1996 (recently updated as “the Multilateral Steel Framework”), prohibits the granting of aid to the steel industry, except under three distinct circumstances: for the closing of facilities, for environmental reasons, and for research and development. See GOI Response at Annex 1. Moreover, there is no allegation that any of these types of subsidies have been made available to Italian producers in this case. Id.

The GOI and EC further state that TKAŠT did not benefit from pre-privatization subsidies, competes on the basis of commercial criteria and did not benefit from aid from its predecessor, ILVA, and received minimal financial assistance after privatization. Id. They further assert that most of the specific programs found countervailable in the investigation are now terminated, as they involved a one-time government action of the then state-owned steel sector, and are therefore no longer available for the Italian steel industry. Id. Thus, the benefits allocated under those programs must have been substantially reduced or even eliminated by the passing of time, such as the expiration of the European Coal and Steel Community (“ECSC”) Treaty in 2002, and no new loans were granted after 1998. Id. The GOI adds that almost every Italian program found to be countervailable in the investigation is either formally terminated with no residual benefits, or, by its own nature, no longer conferring benefits and will not confer any benefit on TKAŠT in the future. See GOI Response. Therefore, all respondents assert that because most of the programs deemed countervailable have been terminated or unlikely to be restarted, revocation of the countervailing duty order would not be likely to lead to continuation or recurrence of a countervailing subsidy.

The domestic interested parties rebut the respondent interested parties’ claims that the subsidies provided to TKAŠT have terminated. See Rebuttal at 4 (May 10, 2004). The domestic interested parties state that the Department has not conducted a review examining those claims, citing to the Policy Bulletin and the SAA. Id. Therefore, the domestic interested parties state that the Department should reject the respondent interested parties’ contentions and report the original investigation net subsidy rate to the ITC.

Department Position: The arguments raised by the EC and the GOI regarding industry restructuring and changes in steel policy within the EU, have been raised previously. See Stainless Steel Wire Rod From Italy; Final Results of Sunset Review of Countervailing Duty Order, 69 FR 40354 (July 2, 2004). Contrary to the assertions of the EC and the GOI, subsidies regarding the environment and research and development may be actionable. The green light provisions of Article 8 expired on December 31, 1999, and when in force, only applied to programs that met certain strict requirements. Thus, the green light provision is not relevant to this case. However, we note that no allegations regarding the environment and research and development have been submitted. Nevertheless, without any evidence that the programs have been terminated, and/or that the benefits from programs for which benefits are allocated over time will not continue beyond this sunset review, we preliminarily determine that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a

countervailable subsidy.

The Department found eleven countervailable programs in the investigation. See Investigation. However, as a result of the exclusion of programs relating to privatization, pursuant to Section 129, only four programs from the investigation remain for consideration in this sunset review. Of these remaining programs, some have residual benefits beyond the period of the sunset review. The Department will normally determine that a countervailable subsidy will continue to exist when the benefit stream continues beyond November 2004, the completion date of the sunset review. See Policy Bulletin 98-3, Section III(A)(4), 63 FR 18871, 18874-5, (April 16, 1998). Therefore, we preliminarily determine that benefits from certain countervailable subsidies on Italian producers/exporters are likely to continue or recur were the order revoked.

Comment 2: Law 796/76 Exchange Rate Guarantees

The GOI (TKAST and the EC defer to the GOI for all explanations of the programs in this preliminary determination) state that this program was terminated on July 10, 1992 by Decree Law 333/92 and is no longer available to the Italian steel industry. See GOI Response. The GOI refers to the Department's administrative review in 2001 of grain-oriented electrical steel from Italy that the benefit provided to TKAST, then AST, under Law 796/76 was linked to the exchange risks of the Article 54 loans that were also provided to AST and that the last outstanding Article 54 loans were repaid on April 11, 1998. Id. The GOI concludes that its repayment of the exchange rate guarantee loans coupled with the expiration of the ECSC Treaty provide enough evidence for the Department to determine definitively that this program is terminated, unlikely to be reinstated, and no longer provides residual benefits.

The domestic interested parties did not specifically address the countervailable programs in their substantive response or rebuttal.

Department Position: In the original investigation, we determined that AST had two outstanding ECSC loans in 1997, the period of our investigation that qualified for the law 796/76 exchange rate guarantees. See Investigation, 64 FR at 15513. We calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, less the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission; then, we divided this amount by AST's total consolidated sales during that period of review. Id. Because the exchange rate converted the payments at the current exchange rate during the life of the loans, we treated the repayments as recurring grants. Id.

We agree that this program was terminated and TKAST would have been unable to acquire new loans after the expiration of the ECSC Treaty. Upon review, we found that the AST verification report that was submitted during the original investigation, as indicated in Annex 4 of the GOI substantive response, and the information referred to in the verification report from the administrative review of grain-oriented steel imports from Italy provide sufficient information that the loans associated with these exchange rate guarantees have been repaid. See AST Exhibit 13 of the Investigation, CVD Verification of AST, C-475-823, C-475-825, ECSC Article 54 Loans, p. S-1500. Thus, based on

evidence that the law was terminated and the loans were repaid, we find that revocation of the countervailing duty order is not likely to lead to continuation or recurrence of a countervailable subsidy with respect to Law 796/76.

Comment 3: Law 675/77

The GOI states that TKAŠT repaid the last of loans provided under Law 675/77 on July 1, 2000, and therefore TKAŠT no longer receives benefits from this program. See GOI Response at Annex 2. AST received these pre-privatization loans when it was still the state-owned company, IRI. Id. The GOI argues that the likelihood for the receipt of benefits disappeared when IRI privatized and was later dissolved. Id.

Department Position: The Department found that loans provided under Law 675/77 were recurring, non-allocable countervailable loans in the original investigation. See Investigation 64 FR at 15513. Under 675/77, IRI issued bonds to finance restructuring measures of companies within the IRI group during its privatization. See Investigation, 64 FR at 15513. During the period of the investigation, the Department found that AST had outstanding loans in which it was responsible for making semi-annual interest payments and annual bond payments. Id. In this sunset review, the respondent interested parties simply asserted and provided no evidence that these loans were repaid in 2000. Without such evidence, we preliminarily determine that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy.

Comment 4: Law 451/94 Early Retirement Benefits

The respondent interested parties explained that steelworkers could apply for the early retirement benefits under this early retirement program only between 1994 and 1996 to receive benefits until their normal ages of retirement for a maximum of ten years. See GOI Response at Annex 2. The respondent interested parties also contend that there can be no benefit from this program after 2006 and the remaining benefits are so small as to be *de minimis*. Id. The respondent interested parties support their argument by estimating that at least 282 of the original 806 individuals receiving benefits under this program are no longer eligible based on their eligibility to receive regular retirement benefits as former employees of TKAŠT and its subsidiaries. Id. See also id. at Annex 5 for the list of individuals. In addition, the respondent interested parties state that at most, 404 former AST workers, representing half of the original 806 individuals, could still be receiving benefits after December 31, 2004. Id. at Annex 2 The respondent interested parties also note that this number is necessarily overstated because an additional number of former employees would have already achieved regular retirement status through military service, years at the university, or previous work before being hired at TKAŠT or its predecessors. Id. Thus, the GOI requests that the Department adjust its net subsidy rate of this program to 0.35 percent which is *de minimis*.

The domestic interested parties did not comment on this program.

Department Position: In our investigation we found that early retirement benefits under Law 451/94 were recurring grants and expensed them in the years of receipt. See Investigation, 64 FR at

15514. As the respondent parties stated, we found that Law 451/94 benefits were granted to individuals who applied during 1994-1996 until the individuals reached their regular retirement age, up to a maximum of ten years. *Id.* The respondent interested parties acknowledge that workers could still receive early retirement benefits beyond the period of this sunset review, November 30, 2004. Because this record evidence indicates that this program may continue to provide benefits after this review period, we find it likely that countervailable subsidies will continue if this order were revoked. The net subsidy rate that is likely to prevail is discussed below in “Net Countervailable Subsidy Likely to Prevail” section.

Comment 5: European Social Fund

The EC states that the reform of the European Structural Funds (“Agenda 2000”) has consolidated legislation into new general regulations to cover all the principles common to the Structural Funds as well as new regulations specific to each of the funds, including the ESF, to provide economic and social conversion of regional areas facing structural difficulties and support the European Employment Strategy; thus, the reform underlines the lack of specificity of assistance. *See* EC Response, Annex 1 at 0-1 and 0-7. Thus, the respondent interested parties argue that the European Social Fund has substantially changed so that it is no longer specific, and therefore, not countervailable. *See* EC Response, Annex 1.

Department Position: We found benefits under the European Social Fund’s (ESF) Objectives 2 and 4 to be countervailable in the original investigation. *See Investigation*, 64 FR at 15516. Although there have been no administrative reviews of this order, the program has continued to be found countervailable in other proceedings. *See, e.g., Grain-Oriented Electrical Steel from Italy: Final Results of Administrative Review of Countervailing Duty Order*, 66 FR 2885 (January 12, 2001). Because the European Social Fund still exists and has been found to provide a countervailable subsidy, we preliminarily determine that the revocation of the countervailing duty order is likely to lead to a continuation or recurrence of a countervailable subsidy.

2. Net Countervailable Subsidy Likely to Prevail: Interested Party Comments:

Comment 6: Applicability of Section 129 Review:

The domestic interested parties assert that based on information from the original investigation involving the subject producer, the Department should find that countervailable subsidies would likely prevail at the investigation rate, 15.16 percent, if the order were revoked. *See* Domestic Response at 36-39. The domestic parties urge the Department to use the investigation rate of 15.16 percent instead of the Section 129 review rate of 1.62 percent because the Section 129 review rate is not equivalent to an administrative review for sunset review purposes. *See* Rebuttal at 3. The domestic interested parties argue that Section 129 reviews are not discussed in the *Policy Bulletin* and do not give the Department the opportunity to issue questionnaires concerning existing subsidies and verify new subsidies, as in administrative reviews. *Id.* Nevertheless, the Department should not revoke the order as long as this order is on appeal in the Court of Appeals for the Federal Circuit and a subsidy program

continues to exist. *Id.* at 4-5.

In their responses, the respondent interested parties assert that the likelihood of continuation or recurrence of subsidization is nil and does not justify the maintenance of countervailing duty measures on exports of the subject merchandise at any rate for the reasons stated above. *See* GOI Response. The EC specifically states that it does not foresee any negative impact from revocation of the order. *See* EC Response. TKAST argues, at a minimum, that the Department should reduce the countervailable benefits from the Section 129 determination to reflect reductions in the actual benefit stream. *See* TKAST Response at 2; TKAST Response to the Department's Adequacy Determination (June 10, 2004) at 4; Responses of GOI and EC.

Department Position: Consistent with the SAA at 890, and the H.R. Rep. No. 103-826, Pt. 1, 103d Cong., 2d Sess. (1994) ("House Report") 64, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. *See also* Sunset Policy Bulletin, Section III.B.1. Where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the International Trade Commission company-specific rates from the original investigation or, where no company-specific rate was determined for a company, the Department normally will provide to the USITC the country-wide or "all others" rate. *See* Sunset Policy Bulletin, Section III.B.1.

Although the SAA at 890, and the House Report at 64, provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. Therefore, the Department may make adjustments to the net countervailable subsidy determined. *See* Sunset Policy Bulletin, Sections III.B.1 and III.B.2.

In the original investigation the Department found a net subsidy rate of 15.16 percent for TKAST, and 15.16 percent "all others." Eleven programs were found to be countervailable for TKAST. However, in the Section 129 Determination, the Department applied its modified privatization methodology and found that pre-privatization subsidies were terminated as a result of an arm's length, fair market sale. Accordingly, the Department revised the all others rate from 15.16 percent to 1.62 percent, effective November 7, 2003. *See* Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products From the European Communities, 68 FR 64858 (November 17, 2003). Because the Department stated that we would implement the privatization methodology prospectively, it is appropriate for the Department to rely upon its Section 129 methodology and the results derived therefrom.

Comment 7: Reduction of Rate for Law 451/94 Early Retirement Benefits:

TKAST contends that this program is the only program under which benefits could be attributed to TKAST. *See* TKAST Response at 2. The GOI requests that the Department determine that Law 451-94 schemes terminated in 1996, and the outstanding benefits are now *de minimis*. *See*

GOI Response at Annex 2, para. G and TKAŠT Response at 2. The GOI states that the law was effective only for three years, 1994-96, to applicants with at least 15 years of pension and at least 50 years old for men and 47 years old for women. See GOI Response. The participants can only receive benefits for a maximum of ten years up to year 2006. Id. From the 806 participants, about 28% of the participated were terminated in 1994, 68% in 1995, and 4% in 1996. Id. In addition, at least 282 of the original 802 participants are no longer eligible for this program because they became eligible for regular retirement by the end of this sunset review. Id. An additional 120 participants are also no longer eligible because they will have received their benefits for the maximum ten years under Law 451/94 by December 31, 2004. Id. The GOI notes that these statistics are necessarily overstated because an additional number of employees would have worked the requisite number of years through military service, years at the university, or prior work experience. Id. Also, employees of subsidiaries are excluded from these estimates. The GOI contends that because at least 402 participants – roughly half of the original total – cannot receive benefits under Law 451/94 after December 31, 2004, the Department should adjust the net subsidy rate by 50% from 0.69 to 0.35 percent.

Department Position: In the Policy Bulletin, we stated that the Department may make adjustments to the net countervailable subsidy determined pursuant to section III. B.2., including, but not limited to, where the Department has conducted an administrative review of the order and found that a program was terminated with no residual benefits and no likelihood of reinstatement. For the countervailing duty order on SSPC from Italy, the Department conducted no administrative reviews. Although we agree with GOI and the EC that Law 451/94 has officially been terminated, the benefits from this program have not ceased. See Investigation at 15514. Because the Department has not conducted an administrative review and benefits continue to exist after the termination of this sunset review, we cannot adjust the net subsidy rate as found in the original investigation, in accordance with section III. B.2 of the Policy Bulletin. Consistent with the Policy Bulletin, the SAA at 890, and the House Report at 64, the Department will provide to the USITC the net countervailable subsidy rate for this program as contained in the investigation.

3. New Subsidy Allegation

Comment 8: Newly Alleged Subsidy - Energy Subsidies to Electrical Steel Operations Plant

Citing to the Policy Bulletin and section 752 of the Act in their rebuttal, domestic interested parties request that the Department investigate the possible provision of electricity at subsidized rates to TKAŠT. The domestic interested parties submitted several press articles containing statements from the European Parliament and the Italian Ministry of Industry calling for possible assistance to TKAŠT to keep it from shutting down a portion of its Terni facility that produces grain-oriented electrical steel and laying off several hundred workers. See Rebuttal at 6 and attached articles. The articles discussed the possibility that such assistance could extend to local infrastructure improvements and the possible renegotiation of the company's electricity contracts. Id. The domestic interested parties contend that such assistance contradicts the EC and GOI's assurances that steel sector subsidy assistance is prohibited. See Rebuttal at 6. The domestic interested parties, therefore, request an investigation into

these new subsidies because they are granted to a particular company and involve a financial contribution at less than adequate remuneration at market price. *Id.* at 7.

Department Position: In accordance with section 752(b)(2)(B) of the Act, the Department will consider programs newly alleged to provide countervailable subsidies where good cause is shown. See also Policy Bulletin Section (III)(C)(2), 63 FR at 18876-77. The Department normally will consider a new subsidy allegation in the context of a sunset review only where information on such program came into existence after the most completed administrative review, and interested parties provided information or evidence to warrant consideration of the newly alleged program. *Id.*

In this case, there have been no administrative reviews, but the information regarding the alleged subsidy program did not come into existence until after the last opportunity to request an administrative review. However, the information provided by the domestic interested parties does not indicate that such programs have been actually established by either the EC, the GOI or the provincial governments, only that they may be desirable to resolve the potential plant closure, layoffs and current strife in the workplace. Further, the statements regarding the possible renegotiation of electricity rates were from TKAST officials not government officials and there is no indication that any renegotiated rate would be for less than adequate remuneration. Therefore, we preliminarily determine that the information by domestic interested parties does not warrant initiation of an investigation of this subsidy allegation within the context of this sunset review.

Preliminary Results of Review:

We preliminarily determine that benefits from the following programs would be likely to continue or recur were the order revoked.

- 1) *Law 675/77*
- 2) *Law 451/94 Early Retirement Benefits*
- 3) *European Social Fund*

Accordingly, for the reasons discussed above, we preliminarily determine there is a likelihood that countervailable subsidies will continue or recur were the order revoked. See Policy Bulletin, Section III(A)(3)(a). We also preliminarily determine that such countervailable subsidies will continue or recur at the rates listed below:

<u>Manufacturer/Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
TKAST	0.80
All Others	1.62

Any interested party may request a hearing within 30 days of publication of this notice in

accordance with 19 CFR 351.310(d)(i). Any hearing, if requested, will be held on December 20, 2004. Interested parties may submit case briefs no later than December 10, 2004, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than December 16, 2004, in accordance with 19 CFR 351.309(d)(1). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs not later than February 25, 2005.

Recommendation: Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the Preliminary Results of Review in the Federal Register.

AGREE _____X_____

DISAGREE_____

ORIGINAL SIGNED

Jeffrey A. May
Acting Assistant Secretary
for Import Administration

10/15/04

Date

PRELIMINARY RESULTS OF SUNSET REVIEW
Countervailing Programs and Margins for TKAST
STAINLESS STEEL PLATE IN COILS FROM ITALY
C-475-823

Programs	Investigation Rate	Section 129 Implementation	Preliminary Sunset Review
Equity Infusions to Terni, TAS, and ILVA	1.03 percent	Excluded	Excluded
Benefits from the 1988-90 Restructuring of Finsider	2.81 percent	Excluded	Excluded
Debt Forgiveness: ILVA-to-AST	9.58 percent	Excluded	Excluded
Law 796/76 - Exchange Rate Guarantees	0.82 percent	0.82 percent	Excluded
Law 675/77	0.07 percent	0.07 percent	0.07 percent
Law 10/91	0.00 percent	Excluded	Excluded
Law 451/94 - Pre-Privatization Employment Benefits	0.69 percent	0.69 percent	0.69 percent
Law 181/89 -Worker Adjustment and Redevelopment Assistance	0.00 percent	Excluded	Excluded
Law 488/92	0.00 percent	Excluded	Excluded
ECSC Article 54 Loans	0.12 percent	Excluded	Excluded
European Social Fund	0.03 percent	0.04 percent	0.04 percent